

REMARKS

The October 2, 2002 Office Action required restriction from among:

- Group I: Claims 46 and 49, drawn to an inactivated or an attenuated whole antigen, classified in class 424, subclass 202.1;
- Group II: Claims 55 and 56, drawn to a subunit antigen, classified in class 424, subclass 204.1; and
- Group III: Claims 41, 57-64, drawn to a recombinant live or a DNA vector, classified in class 424, subclass 199.1.

Claims 38-40, 42-45, 47, 48, 50-54 and 65-67 are linking claims that will be examined with any of the above Groups.

Additionally, election of Group II or III is elected, requires a further election of one of circovirus ORFs 1-13.

Applicants elect, with traverse, Group I.

The Office Action states that the claims of Groups I-III are unrelated because "the subunits of Group II, the inactivated/attenuated viruses of group I, and the vectors of group III are structurally and functionally divergent and each can be made by different methods." Office Action at 2. The office action continues to describe the methods by which inactivated/attenuated viruses, subunits and vectors may be made. According to the Office Action, the above satisfies the MPEP's requirements for determining unrelated inventions, namely that inventions may be unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects. MPEP §§ 806.04 and 808.01.

It is respectfully submitted that the MPEP (as referenced in the Office Action) does not set forth that differences in methods of making does not qualify as different modes of operation, different functions or different effects.

Furthermore, it is also respectfully submitted that the actual characterization of Groups I, II and III is as vaccines for eliciting an immunological response against porcine parvovirus, not solely to inactivated/attenuated whole antigens, subunit antigens, or vectors as described in the Office Action. Therefore, the claims of Groups I-III are all related as vaccines that provide an immunological response against porcine parvovirus, in fact, the claims of Groups I-III are all classified in class 424.

The MPEP lists two criteria for a proper restriction requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ... even though it includes claims to distinct or independent inventions.” *Id.*

Additionally, the Examiner’s attention is respectfully drawn to MPEP §808.02 which states, “even with patently distinct inventions, restriction is not (emphasis added) required unless one of the following reasons appears:

Separate classification;
Separate status in the art; or
Different field of search[.]”

In the instant case, the Office Action makes no showing that searching all of the claims would be an undue burden. The claims of Groups I-III are all directed towards vaccines for eliciting an immunological response against porcine parvovirus, such that the Groups are interrelated and the search of the claims would overlap. Furthermore, the claims of Groups I-III are all classified in class 424, further demonstrating the interrelatedness of the Groups.

Consequently, the restriction requirement is improper and must be withdrawn.

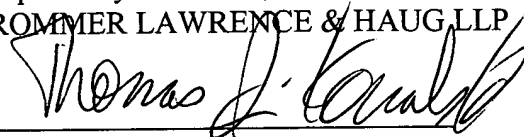
In addition, enforcing the present restriction requirement would result in inefficiencies and unnecessary expenditures by both the Applicants and the PTO, as well as extreme prejudice to Applicants (particularly in view of GATT, a shortened patent term may result in any divisional or continuing applications filed). Restriction has not been shown to be proper, especially since the requisite showings have not been made in the Office Action and there are relationships between all of the pending claims. Indeed, the search and examination of each Group is likely to be co-extensive as all claims are classified in the same class and subclass, and, in any event, would involve such interrelated art such that the search and examination of the entire application can and should be made without. All of the foregoing, therefore, mitigate against restriction.

CONCLUSION

In view of the remarks herein, reconsideration and withdrawal of the restriction requirement is respectfully requested, as is an early and favorable examination on the merits.

Respectfully submitted,
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